Supreme Court of the United States

OCTOBER TERM, 1954

No. 69

JOE VALDEZ GONZALES,

Petitioner

v.

UNITED STATES OF AMERICA,

Respondent

Petitioner's REPLY TO BRIEF IN OPPOSITION to Petition for Writ of Certiorari to the United States Court of Appeals for the Sixth Circuit

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Cases Cited

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MAY IT PLEASE THE COURT:

I.

It is argued by the Government that there is no conflict in the holding by the court below (that there was basis in fact for the denial of the conscientious objector status) and the holdings by other courts of appeals in identical cases involving the same showing made by other Jehovah's Witnesses.

The undisputed documentary evidence in the file before

the appeal board showed that the petitioner was conscientiously opposed to participation in combatant and noncombatant military service. He showed: (1) he believed in the Supreme Being, (2) he was opposed to participation in combatant and noncombatant military service, (3) he based his belief and opposition to service on religious training and belief as one of Jehovah's Witnesses, (4) such stand did not spring from political, sociological or philosophical beliefs. This showing brought him squarely within the statute and the regulation providing for classification as a conscientious objector. This entitled him to exemption from combatant and noncombatant military training and service.

It has been held by many courts of appeal that the rule laid down in *Dickinson* v. *United States,* 346 U. S. 389, holding that if there is no contradiction of the documentary evidence showing exemption as a minister that there is no basis in fact for the classification also applies in cases involving claims for classification as conscientious objectors. —*Weaver* v. *United States,* 8th Cir., Feb. 19, 1954, 210 F. 2d 815; *Taffs* v. *United States,* 8th Cir., Dec. 7, 1953, 208 F. 2d 329; *United States* v. *Hartman,* 2d Cir., Jan. 8, 1954, 209 F. 2d 366; *Pine* v. *United States,* 4th Cir., April 5, 1954, 212 F. 2d 93; *Jewell* v. *United States,* 6th Cir., Dec. 22, 1953, 208 F. 2d 770; *Schuman* v. *United States,* 9th Cir., Dec. 21, 1953, 208 F. 2d 801; *Jessen* v. *United States,* 10th Cir., May 7, 1954, — F. 2d —; *United States* v. *Close,* 7th Cir., June 10, 1954, — F. 2d —; *contra United States* v. *Simmons,* 7th Cir., June 15, 1954, — F. 2d —.

Recently in *Jessen* v. *United States,* 10th Cir., May 7, 1954, — F. 2d —, after quoting from *Dickinson* v. *United States,* 346 U. S. 389, the court said:

> "Here, the uncontroverted evidence supported the registrant's claim that he was opposed to participation in war in any form. There was a complete absence of any impeaching or contradictory evidence. It follows that the classification made

> by the State Appeal Board was a nullity and that Jessen violated no law in refusing to submit to induction."

The decision of the court below is in direct conflict with the holdings in other cases decided by other courts of appeal. In those cases the appellants, like petitioner here, were Jehovah's Witnesses. They showed the same religious belief, the same objection to service and the same religious training. While different speculations were relied upon by the Government which were discussed and rejected by the courts in those cases, the courts were also called upon to say, on facts identical to the facts in this case, whether there was basis in fact. For instance, see *Jessen* where the Tenth Circuit (after following *Taffs* v. *United States*, 8th Cir., Dec. 7, 1953, 208 F. 2d 329) said: "The remaining question is whether there was any basis in fact for the classification made by the State Appeal Board."

The holdings of other circuits with which the holding of the court below (that there was basis in fact for the denial of the classification) directly conflicts are: *Annett* v. *United States*, 10th Cir., June 26, 1953, 205 F. 2d 689; *United States* v. *Pekarski*, 2d Cir., Oct. 23, 1953, 207 F. 2d 930; *Taffs* v. *United States*, 8th Cir., Dec. 7, 1953, 208 F. 2d 329; *Jewell* v. *United States*, 6th Cir., Dec. 22, 1953, 208 F. 2d 770; *Schuman* v. *United States*, 9th Cir., Dec. 21, 1953, 208 F. 2d 801; *United States* v. *Hartman*, 2d Cir., Jan. 8, 1954, 209 F. 2d 366; *Pine* v. *United States*, 4th Cir., April 5, 1954, 212 F. 2d 93; *Jessen* v. *United States*, 10th Cir., May 7, 1954, — F. 2d —; *United States* v. *Close*, 7th Cir., June 10, 1954, — F. 2d —. And these cases ought not to be pushed aside on the specious but factitious ground that, because the courts in some of those cases discussed the speculations urged on the courts as basis in fact, the cases are different. They are not different because on the question of whether or not there was basis in fact the evidence in each case is identical to the facts in this case and the holdings were the opposite to that made by the court below in this case. Such attempted dis-

tinction would be a distinction without a difference. The cases above cited are identical to the facts in this case insofar as the statements in the draft board record showing conscientious objection are concerned.

It is submitted, therefore, that there is a direct conflict between the holding of the court below and the holding of other courts of appeals on this question. This gives a basis for granting the writ of certiorari.

II.

The Government contends on pages 16 and 17 of its brief that there is no error committed when the petitioner was deprived of due process of law by the Department of Justice and the appeal board. It is said that the reason for the contention is that it is harmless error because the final recommendation of the Department of Justice is advisory only. The short answer to this is that it ceases to be advisory when the recommendation is accepted and acted upon by the appeal board.

The recommendation of the Department of Justice is advisory and may be rejected by the appeal board. This does not mean that denials of due process are harmless. When the recommendation is not rejected but the advice is followed then it becomes a link in the chain of administrative proceedings. A break in this link of the chain destroys the proceedings.—*United States* v. *Everngam*, D. W. Va., 1951, 102 F. Supp. 128; *United States* v. *Bouziden*, W. D. Okla., 1952, 108 F. Supp. 395.

The adoption and following of erroneous advice from the Department of Justice by the appeal board makes invalid the final classification. *Annett* v. *United States*, 10th Cir., 1953, 205 F. 2d 689; *Taffs* v. *United States*, 8th Cir., Dec. 7, 1953, 208 F. 2d 329; *Jessen* v. *United States*, 10th Cir., May 7, 1954, — F. 2d —; *United States* v. *Close*, 7th Cir., June 10, 1954, — F. 2d —. It cannot be argued, therefore that the illegal denial of right to answer did no harm. It has been held that where there is an illegal recommenda-

tion by the Department of Justice and the evidence shows that the registrant is a conscientious objector it must be concluded that the only reason for a denial of the conscientious objector claim is the illegal recommendation which makes the classification illegal.—*United States* v. *Close*, 7th Cir., June 10, 1954, — F. 2d —; *contra United States* v. *Simmons*, 7th Cir., June 15, 1954, — F. 2d —.

It is submitted that there is presented here an important and substantial question of law that has not been decided by this Court but which ought to be determined by this Court. This is a sufficient ground for granting certiorari.

WHEREFORE, it is submitted for the reasons set forth above and in the petition for writ of certiorari that the petition should be granted.

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